

5/19/08

## Settlement Agreement

### **I. Entry of Consent Decree**

Upon execution of this agreement (Agreement), Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, and Joseph Swan, Sr., (collectively, the Plaintiffs), Teck Cominco Alaska Incorporated (Teck Cominco), NANA Regional Corporation (NANA), and the Northwest Arctic Borough (Borough) will lodge with the court a proposed consent decree (Consent Decree), in the form attached as Exhibit A, dismissing with prejudice all claims asserted in *Adams v. Teck Cominco*, A:04-00049 CV (JWS) (*Adams v. Teck Cominco*). Following the government review process required by applicable regulations (40 CFR § 135.5), the parties to the litigation promptly will file a joint motion in the form attached as Exhibit B to enter the Consent Decree. Entry, or rejection, by the Court of the Consent Decree shall not alter the effect or efficacy of any of the terms of this Agreement, except that if the Consent Decree is not approved by the Court in the form presented, this Agreement shall be voidable at the sole discretion of either the Plaintiffs or Teck Cominco.

### **II. Pipeline**

A. After entry of the Consent Decree, Teck Cominco will, in good faith, undertake to design, construct and operate a pipeline to carry Red Dog Mine effluent from the Red Dog Mine through the DeLong Mountain Transportation System (DMTS) right-of-way corridor to an outfall to be constructed in the Chukchi Sea at or near the DMTS Port (the "Pipeline"). Teck Cominco will diligently pursue the necessary permits and other needed approvals for the construction and operation of the Pipeline. Teck Cominco will apply for certain permits according to the schedule listed in Exhibit C. NANA and the Borough warrant that they support the pipeline concept and will actively work for its implementation.

B. Except as otherwise provided in this subsection, if the permits and approvals necessary to build the pipeline, and to develop and mine the Aqqaluk Deposit, are obtained, Teck Cominco will engineer, construct and operate the Pipeline. If Teck Cominco elects not to proceed with the Pipeline, it will notify the court and Plaintiffs, and it will pay a civil penalty in the amount of eight million (\$8,000,000) dollars if Teck Cominco's decision not to proceed is for good cause or twenty million (\$20,000,000) dollars if Teck Cominco's decision not to proceed is not for good cause. Teck Cominco has good cause not to build the Pipeline if: (1) the approval conditions imposed in the federal, state or local permits, and in any other needed approvals, required for permitting, engineering and constructing the Pipeline require substantial, material undertakings other than the design, construction and operation of the Pipeline in the DMTS, (2) the failure to receive necessary permits and other needed approvals to build the Pipeline and develop and mine the Aqqaluk deposit within a reasonable period of time is for reasons beyond Teck Cominco's control, or (3) the total cost of permitting, engineering and constructing

the Pipeline exceeds \$120 million. Any disputes about whether Teck Cominco's decision not to proceed is for good cause shall be determined by the Court in *Adams v. Teck Cominco*. Payment of the penalty shall be made to the United States.

C. Teck Cominco warrants that as of the time of this Agreement, it has no reason to believe that a pipeline cannot be designed, engineered, constructed, and/or operated within the DMTS as provided for in this Agreement, and that all information available to it suggests that engineering and construction costs for the Pipeline will be substantially less than \$120 million. Teck Cominco further warrants that as of the time of this Agreement, it has no reason to believe that the Pipeline cannot be permitted, and no reason to believe that any necessary permits or permissions will not be granted.

D. Teck Cominco will annually report in writing to the court and Plaintiffs: (1) what permits have been applied for, (2) the current status of the applications, (3) any known obstacles to permitting or construction of the Pipeline, (4) the total costs expended that year and to date, and (5) other steps taken in furtherance of permitting, engineering and constructing the Pipeline.

E. If Teck Cominco fails to diligently design, construct, and operate the Pipeline and seek necessary permits and approval, Plaintiffs may seek to enforce the terms of the Consent Decree at any time.

### III. Kivalina Environmental Benefits

Within 90 days of the execution of this Agreement, Teck Cominco shall purchase and provide reverse osmosis water filtration units in sufficient quantities to serve each residence, business and public building in Kivalina, in no case less than 125 such units. Upon delivery, Teck Cominco shall pay the City of Kivalina \$10,000 for the installation of these units; such payment could be used to send a Kivalina resident for training on installation and maintenance of the units. Commencing in 2009 and until the commencement of marine discharge from the Pipeline referenced in section II, Teck Cominco shall pay the City of Kivalina \$50,000 per year to maintain or replace the reverse osmosis water filtration units.

### IV. Releases

A. Upon entry of the Consent Decree, Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, and Joseph Swan, Sr., individually and in any official capacity that they each may have, will each withdraw as appellants with respect to their pending appeal of Alaska's § 401 certification of NPDES Permit AK-003865-2 before the Alaska Department of Environmental Conservation (ADEC), and will seek to have their appeal dismissed with prejudice as to them, and will further agree not to assist, support or in any other way participate with any of the other parties to that appeal in furtherance of the other parties' appeal.

B. Individually and in any official capacity that they each may have, Enoch Adams Jr., Leroy Adams, Andrew Koenig, Jerry Norton, and Joseph Swan, Sr., and all of their assigns, hereby release and fully and forever discharge Teck Cominco, NANA, the Borough, and their present and former affiliates, subsidiaries, owners, partners, directors,

officers, employees, associates, agents, and representatives, of and from any and all claims, demands, suits, liabilities, causes of action, judgments, settlements, losses, damages, expenses, costs and penalties of every kind and nature whatsoever, which accrued prior to the date of settlement, with the exception of claims for personal injury caused by exposure to a toxic substance ("toxic torts"). All parties warrant that as of the date of this Agreement, they do not know of any such claims, and do not intend to file any such claims. In reliance upon that warranty, Teck Cominco will not assert that any party should now know of any such claims.

C. Teck Cominco, NANA, and the Borough, individually and on behalf of their present and former affiliates, subsidiaries, owners, partners, directors, officers, employees, and associates hereby release and fully and forever discharge Enoch Adams Jr., Leroy Adams, Andrew Koenig, Jerry Norton, Joseph Swan, Sr. of and from any and all claims, demands, suits, liabilities, causes of action, judgments, settlements, losses, damages, expenses, costs and penalties of every kind and nature whatsoever, which accrued prior to the date of settlement.

D. Notwithstanding any other provision of this section, neither Enoch Adams Jr. nor the Borough release against the other any employment-related claims which accrued prior to the date of settlement.

#### V. Agreement to Cooperate

All parties to this Agreement will work cooperatively to actively support the reasonable permitting of the Pipeline as described in section II. Except as expressly provided in this Agreement, Enoch Adams Jr., Leroy Adams, Andrew Koenig, Jerry Norton, and Joseph Swan, Sr., individually and in any official capacity that they each may have, each agree that if Teck Cominco does not appeal from the issuance of any permit, consent or other authorization required for (1) the discharge of effluent from Red Dog Mine, (2) the construction and operation of the Pipeline, and/or (3) the mining of the Aqqaluk deposit, then they will withdraw from and dismiss any appeal that they may have brought relative to the same permit, consent or other authorization. With respect to the Pipeline, all parties agree that they will not seek in any permit, authorization or consent for the construction or operation of the Pipeline the imposition of undertakings other than those related to the design, construction and operation of the Pipeline in a manner that is environmentally sound and protective of public health. This paragraph is otherwise not meant to restrict any party to this Agreement from providing input to permitting authorities or from otherwise participating in the public processes preceding issuance of any permit, consent or other authorization. Further, Plaintiffs may in any event appeal from limits set for Total Dissolved Solids ("TDS") discharge into Red Dog Creek from when grayling begin spawning in the Main Stem of Red Dog Creek until the conclusion of that spawning season as determined by Alaska Department of Fish and Game. Teck Cominco will not seek higher in-stream TDS limits than 1500 mg/L.

#### VI. Consent Decree Terms

A. The parties to this Agreement will not sue Teck Cominco for violations of any of its NPDES permits between the date of settlement and the earlier of (a) the date

that marine discharge via the Pipeline commences, (b) Teck Cominco advises Plaintiffs pursuant to section II that it is unable to proceed with the Pipeline in accordance with this agreement, or (c) the Consent Decree is terminated by the Court.

B. Commencing from the date of the Agreement and continuing through the effective date of the reissuance of NPDES Permit No. AK-003865-2, Teck Cominco shall comply with the existing permitted effluent discharge and in-stream water quality limits in NPDES Permit No. AK-003865-2 (as issued in 1998, and modified in 2003) with respect to parameters other than TDS, and shall comply with the Alaska State water quality standards for TDS ("Interim Effluent Limits"). As to TDS, it shall comply with the In-Stream Limit at the End of the Mixing Zone in Red Dog Creek (Station 151). The in-stream limit for TDS at Station 151 (downstream edge of the mixing zone in Main Stem Red Dog Creek) shall be 1500 mg/L from the start of, and at all times during, the discharge season, regardless of the concentration of TDS in Outfall 001. The applicable in-stream TDS concentrations for waters receiving Red Dog Mine discharge are as follows:

- i. 1500 mg/L at the downstream edge of the mixing zone in Main Stem Red Dog Creek (Station 151);
- ii. 1000 mg/L at the downstream edge of the mixing zone in Ikalukrok Creek (Station 150); and
- iii. 500 mg/L after July 25<sup>th</sup> in Lower Ikalukrok Creek (Station 160).

The Interim Effluent Limits shall be governed by the definitions in the existing NPDES Permit No. AK-003865-2 Condition I.K.

C. The Interim Effluent Limits shall remain in effect until the effective date of the effluent limits prescribed in a renewed NPDES Permit No. AK-003865-2, and as to any effluent limits in a reissued permit whose effective date may be delayed or stayed as a result of administrative appeals or otherwise, during the period that the effluent limits are stayed. Consistent with the spirit of Evidence Rule 408, the Interim Effluent Limits have been agreed to during settlement negotiations and cannot be relied on or used by any party in any future proceeding.

D. Beginning with the date of entry of the consent decree and continuing through the earlier of (a) the date that marine discharge via the Pipeline commences or (b) Teck Cominco advises Plaintiffs pursuant to section II that it elects not to proceed with the Pipeline in accordance with this agreement, Teck Cominco shall pay to the United States, automatically and without notice or demand, stipulated penalties in the amounts set forth below for the below listed violations of the Interim Effluent Limits applicable to Red Dog Mine and violations of the effluent limits in the reissued NPDES Permit No. AK-003865-2. For each violation of a given effluent discharge limit, Teck Cominco shall pay stipulated penalties as follows:

<u>Number of Daily Violations per Discharge Limit</u>	<u>Penalty</u>
1-10	\$625
11-25	\$1,500



26-50	\$3,750
51-300	\$6,000
301+	\$12,500

<u>Number of Monthly Violations per Discharge Limit</u>	<u>Penalty</u>
1-30	\$625
31-60	\$1,500
61-185	\$3,750
186-500	\$6,000
500+	\$12,500

For purposes of calculating the number of violations, violations shall not be cumulated for more than five years on a rolling basis. A monthly violation is a violation for every day in which discharge occurs during that month.

Within 30 days of entry of the Consent Decree and until reissuance of NPDES Permit No. AK-003865-2, Teck Cominco shall pay a civil penalty of \$118,750 to the United States for each discharge season.

Consistent with the spirit of Evidence Rule 408, the stipulated penalties have been agreed to during settlement negotiations and cannot be relied on or used by any party in any future proceeding.

E. Teck Cominco shall pay all stipulated penalties to the United States by electronic funds transfer within 30 days of the submittal to EPA Region 10 of the discharge monitoring report that reports the occurrence of a violation under this Agreement. Compliance by Teck Cominco with the Interim Effluent Limits for Red Dog Mine and/or the reissued permit effluent limits for Red Dog Mine, together with timely payment of any stipulated penalties assessed pursuant to this section, constitutes a complete remedy for any violations of the effluent limitations contained in NPDES Permit No. AK-003865-2 that occur between the date of entry of the decree and the effective date of reissuance of NPDES Permit No. AK-003865-2, and for any violations of the effluent limits contained in a reissued permit No. AK-003865-2 that occur between the date of re-issuance and the operation of the Pipeline. Teck Cominco shall file annually with the Court and provide monthly to the plaintiffs a report of violations and automatic penalties assessed pursuant to the Decree.

## VII. Joint Press Release

A joint press release of the parties to this Agreement will be issued containing only mutually agreed upon terms; no individual press releases may be issued and no comments may be made by any party or counsel to any party to this Agreement that are inconsistent with the joint press release.

#### **VIII. Discharge into Red Dog Creek**

All parties to this agreement seek to avoid discharging effluent at Red Dog Mine into Red Dog Creek after the Pipeline is completed and will work toward that goal in the permitting of the Pipeline. In the event that any permit is issued requiring ongoing and/or regular effluent discharge into Red Dog Creek after the Pipeline becomes operational, Teck Cominco shall, and other parties to this Agreement may, appeal from the imposition of such a requirement.

#### **IX. Attorney Fees and Costs**

Teck Cominco shall pay the Plaintiffs' attorney fees and costs in the amount of \$2,350,000 within 30 days of the entry by the court of the Consent Decree.

#### **X. Pre-filing Confidentiality**

The parties to this Agreement agree to keep the terms of this Agreement confidential until the Consent Decree is lodged with the Court.

#### **XI. Authority to Enter into Agreement**

The parties each individually represent, warrant and agree that they have the full right and authority to enter into this Agreement, and to provide the covenants set forth in this Agreement, and that the party or representative executing this Agreement has the full right and authority to commit and bind such party according to the provisions hereof.

#### **XII. Binding Effect of Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors in interest and assigns.

#### **XIII. Commitment to Support Agreement**

The parties each agree to support this Agreement.

#### **XIV. Complete Agreement**

This Agreement and the Consent Decree when entered by the Court constitute the entire agreement among the parties relating to the settlement of *Adams v. Teck Cominco*.

#### **XV. Modification of Agreement**

No modification or waiver of this Agreement or any part hereof shall be valid or effective unless in writing and signed by all parties. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other subsequent breach or condition, whether of like or different nature.

**XVI. Severability**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**XVII. Counterparts/PDF and Facsimile Signatures**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. PDF or facsimile signatures shall have the same effect as an original and may be relied upon by any party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as set forth below, intending to be legally bound by the terms and conditions of this Agreement.

DATED: June 17  
HC May 2008

Center on Race, Poverty & the Environment  
Attorneys for Enoch Adams, Jr., Leroy Adams,  
Andrew Koenig, Jerry Norton, David Swan and  
Joseph Swan

By: \_\_\_\_\_

Luke Cole

DATED: May \_\_, 2008

Hartig Rhodes Hoge Lekisch, PC  
Attorneys for Teck Cominco Alaska Incorporated

By: \_\_\_\_\_

Sean Halloran

DATED: May \_\_, 2008

Heller Ehrman LLP  
Attorneys for NANA Regional Corp.

By: \_\_\_\_\_

James E. Torgerson

DATED: May \_\_, 2008

Landye Bennett Blumstein LLP  
Attorneys for Northwest Arctic Borough

By: \_\_\_\_\_

David S. Case, P.C.

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Center on Race, Poverty & the Environment  
Attorneys for Enoch Adams, Jr., Leroy Adams,  
Andrew Koenig, Jerry Norton, David Swan and  
Joseph Swan

By: \_\_\_\_\_  
Luke Cole

*July 15*  
DATED: May \_\_, 2008

Hartig Rhodes Hoge Lekisch, PC  
Attorneys for Teck Cominco Alaska Incorporated.

By: \_\_\_\_\_  
Sean Halloran

DATED: May \_\_, 2008

Heller Ehrman LLP  
Attorneys for NANA Regional Corp.

By: \_\_\_\_\_  
James E. Torgerson

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Attorneys for Enoch Adams, Jr., Leroy Adams,  
Andrew Koenig, Jerry Norton, David Swan and  
Joseph Swan


By: \_\_\_\_\_  
Luke Cole

DATED: May \_\_, 2008

Hartig Rhodes Hoge Lekisch, PC  
Attorneys for Teck Cominco Alaska Incorporated

By: \_\_\_\_\_  
Sean Halloran

DATED: <sup>July 18</sup> ~~May~~ \_\_, 2008

Heller Ehrman LLP  
Attorneys for NANA Regional Corporation, Inc. 

By:  \_\_\_\_\_  
James E. Torgerson

DATED: May \_\_, 2008

Landye Bennett Blumstein LLP  
Attorneys for Northwest Arctic Borough

By: \_\_\_\_\_  
David S. Case, P.C.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as set forth below, intending to be legally bound by the terms and conditions of this Agreement.

DATED: May \_\_, 2008

Center on Race, Poverty & the Environment  
Attorneys for Enoch Adams, Jr., Leroy Adams,  
Andrew Koenig, Jerry Norton, David Swan and  
Joseph Swan

By: \_\_\_\_\_  
Luke Cole

*July 15*  
DATED: May \_\_, 2008

Hartig Rhodes Hoge Lekisch, PC  
Attorneys for Teck Cominco Alaska Incorporated

By: \_\_\_\_\_  
Sean Halloran

DATED: May \_\_, 2008

Heller Ehrman LLP  
Attorneys for NANA Regional Corp.

By: \_\_\_\_\_  
James E. Torgerson

*July 16*  
DATED: May \_\_, 2008

Landye Bennett Blumstein LLP  
Attorneys for Northwest Arctic Borough

By: \_\_\_\_\_  
David S. Case, P.C.

EXHIBIT A

PROPOSED CONSENT DECREE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY ADAMS,  
ANDREW KOENIG, JERRY NORTON,  
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA  
INCORPORATED,

Defendant,

NANA REGIONAL CORPORATION, and  
NORTHWEST ARCTIC BOROUGH,  
Intervenor-Defendants.

Case No.: A:04-cv-0049 (JWS)

**[PROPOSED] CONSENT DECREE**

WHEREAS, Plaintiffs Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, David Swan and Joseph Swan filed a Complaint against Defendant Teck Cominco Alaska Incorporated on March 8, 2004, filed a Revised Complaint on July 7, 2004, filed a Supplemental Revised Complaint on October 12, 2007, and filed a First Amended Supplemental Revised Complaint on August 29, 2008 (collectively referred to herein as the "Complaint"), alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharge limits set by the National Pollution Discharge Elimination System (NPDES) permits for the Red Dog Mine and

1 for the DeLong Mountain Transportation System (DMTS) Port in northwest Alaska, seeking  
2 declaratory and injunctive relief, civil penalties and attorneys fees and costs;

3 WHEREAS Defendant Teck Cominco Alaska Incorporated (Teck Cominco) has  
4 contested the Plaintiffs' claims and any liability for the alleged violations;

5 WHEREAS NANA Regional Corporation, Inc. (NANA) has intervened as a defendant;

6 WHEREAS the Northwest Arctic Borough (Borough) has intervened as a defendant for  
7 remedial purposes; and

8 WHEREAS the parties to this action have engaged in discussions relating to the potential  
9 settlement of this litigation, which discussions have included an assessment of the facts  
10 surrounding the alleged violations; and

11 WHEREAS Defendant Teck Cominco has undertaken, and is implementing, measures to  
12 further ensure compliance with the Clean Water Act at the Red Dog Mine and the DMTS Port  
13 and to address issues raised in the notices of intent to sue served by the Plaintiffs; and

14 WHEREAS Teck Cominco warrants that as of the time of the Settlement Agreement on  
15 file with the Court in this case (Settlement Agreement), it has no reason to believe that the  
16 Pipeline described in Paragraph 8 cannot be designed, engineered, constructed, and/or operated  
17 within the DMTS as provided for in the Settlement Agreement, and that all information available  
18 to it suggests that engineering and construction costs for the Pipeline will be substantially less  
19 than \$120 million. Teck Cominco further warrants that as of the time of the Settlement  
20 Agreement, it has no reason to believe that the Pipeline cannot be permitted, and no reason to  
21 believe that any necessary permits or permissions will not be granted; and

22 WHEREAS NANA and the Borough warrant that they support the pipeline concept and  
23 will actively work for its implementation; and



1 WHEREAS the Plaintiffs and all Defendants agree that settlement of these matters is in  
2 the best interests of the parties and of the public, and that entry of this Consent Decree without  
3 additional litigation is the most appropriate means of resolving these actions; and

4 WHEREAS the Plaintiffs and Defendants, by their authorized counsel, consent to the  
5 entry of this Consent Decree in order to avoid the risks of litigation and to resolve the  
6 controversy between them;  
7

8 NOW THEREFORE, upon consent of the parties, and upon consideration of the mutual  
9 promises herein contained, it is hereby

10 ORDERED, ADJUDGED AND DECREED as follows:

- 11 1. This Court has jurisdiction over the parties and subject matter of this action.
- 12 2. The undersigned representative for each party certifies that he is fully authorized  
13 by the party or parties whom he represents to enter into the terms and conditions of this  
14 Consent Decree and to legally bind the party or parties and their successors in interest to  
15 it.  
16
- 17 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon  
18 the successors in interest and assigns of the parties.  
19
- 20 4. This Consent Decree shall apply on a going forward basis to Defendant Teck  
21 Cominco's continued discharge of effluent from its operation of the Red Dog Mine,  
22 which is located on Red Dog Creek, 82 miles north of Kotzebue, Alaska, at latitude 68°  
23 4' 17" and longitude 162° 52' 5" (Mine).  
24
- 25 5. This Consent Decree constitutes a full and complete settlement of the claims  
26 alleged in the Complaint and all other claims that accrued as of the date of entry of this  
27 Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-  
28  
29

1 1387, for violations of NPDES permits issued to Teck Cominco for the Red Dog Mine  
2 and for the DMTS Port.

3 6. This Consent Decree shall not constitute (1) evidence in any proceeding other  
4 than this one, (2) an admission or adjudication with respect to any allegation of the  
5 Complaint, (3) a fact or conclusion of law with respect to any matter alleged in or arising  
6 out of the Complaint, (4) an admission or evidence of any wrongdoing or misconduct on  
7 the part of any Defendant or its successor, or (5) a concession by any party of any legal or  
8 factual issue.  
9

10 7. In full and complete satisfaction of the claims covered by the Complaint and all  
11 other claims covered by this Consent Decree, as described in Paragraph 5, Defendant  
12 Teck Cominco agrees to abide by and be subject to the terms and conditions set forth in  
13 this Consent Decree.  
14

15 8.

16  
17 A. After entry of the Consent Decree, Teck Cominco will, in good faith, undertake to  
18 design, construct and operate a pipeline to carry Red Dog Mine effluent from the Red Dog Mine  
19 through the DeLong Mountain Transportation System (DMTS) right-of-way corridor to an  
20 outfall to be constructed in the Chukchi Sea at or near the DMTS Port (the "Pipeline"). Teck  
21 Cominco will diligently pursue the necessary permits and other needed approvals for the  
22 construction and operation of the Pipeline. Teck Cominco will apply for certain permits  
23 according to the schedule listed in Exhibit C to the Settlement Agreement.  
24

25 B. Except as otherwise provided in this subsection, if the permits and approvals  
26 necessary to build the Pipeline, and to develop and mine the Aqqaluk Deposit, are obtained, Teck  
27 Cominco will engineer, construct and operate the Pipeline. If Teck Cominco elects not to  
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1 proceed with the Pipeline, it will notify the Court and Plaintiffs, and it will pay a civil penalty in  
2 the amount of eight million (\$8,000,000) dollars if Teck Cominco's decision not to proceed is for  
3 good cause or twenty million (\$20,000,000) dollars if Teck Cominco's decision not to proceed is  
4 not for good cause. Teck Cominco has good cause not to build the Pipeline if: (1) the approval  
5 conditions imposed in the federal, state or local permits, and in any other needed approvals,  
6 required for permitting, engineering and constructing the Pipeline require substantial, material  
7 undertakings other than the design, construction and operation of the Pipeline in the DMTS, (2)  
8 the failure to receive necessary permits and other needed approvals to build the Pipeline and  
9 develop and mine the Aqqaluk Deposit within a reasonable period of time is for reasons beyond  
10 Teck Cominco's control, or (3) the total cost of permitting, engineering and constructing the  
11 Pipeline exceeds \$120 million. Any disputes about whether Teck Cominco's decision not to  
12 proceed is for good cause shall be determined by the Court. Payment of the penalty shall be  
13 made to the United States.

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17 C. Teck Cominco will annually report in writing to the Court and Plaintiffs: (1) what  
18 permits have been applied for, (2) the current status of the applications, (3) any known obstacles  
19 to permitting or construction of the Pipeline, (4) the total costs expended that year and to date,  
20 and (5) other steps taken in furtherance of permitting, engineering and constructing the Pipeline.

21  
22 D. If Teck Cominco fails to diligently design, construct, and operate the Pipeline and  
23 seek necessary permits and approval, Plaintiffs may seek to enforce the terms of this Consent  
24 Decree at any time.

25 9. Teck Cominco shall purchase and provide reverse osmosis water filtration units in  
26 sufficient quantities to serve each residence, business and public building in Kivalina, in  
27 no case less than 125 such units. Upon delivery, Teck Cominco shall pay the City of  
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1 Kivalina \$10,000 for the installation of these units in accordance with the Settlement  
2 Agreement. Commencing in 2009 and until the commencement of marine discharge  
3 from the Pipeline referenced in paragraph 8, Teck Cominco shall pay the City of Kivalina  
4 \$50,000 per year to maintain or replace the reverse osmosis water filtration units.  
5  
6 10.

7 A. Commencing from May 14, 2008 and continuing through the effective date of the  
8 reissuance of NPDES Permit No. AK-003865-2, Teck Cominco shall comply with the existing  
9 permitted effluent discharge and in-stream water quality limits in NPDES Permit No. AK-  
10 003865-2 (as issued in 1998, and modified in 2003) with respect to parameters other than TDS,  
11 and shall comply with the Alaska State water quality standards for TDS ("Interim Effluent  
12 Limits"). As to TDS, it shall comply with the In-Stream Limit at the End of the Mixing Zone in  
13 Red Dog Creek (Station 151). The in-stream limit for TDS at Station 151 (downstream edge of  
14 the mixing zone in Main Stem Red Dog Creek) shall be 1500 mg/L from the start of, and at all  
15 times during, the discharge season, regardless of the concentration of TDS in Outfall 001. The  
16 applicable in-stream TDS concentrations for waters receiving Red Dog Mine discharge are as  
17 follows:  
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- 20  
21 i. 1500 mg/L at the downstream edge of the mixing zone in Main Stem Red  
22 Dog Creek (Station 151);  
23 ii. 1000 mg/L at the downstream edge of the mixing zone in Ikalukrok Creek  
24 (Station 150); and  
25 iii. 500 mg/L after July 25<sup>th</sup> in Lower Ikalukrok Creek (Station 160).  
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The Interim Effluent Limits shall be governed by the definitions in the existing NPDES Permit No. AK-003865-2 Condition I.K.

B. The Interim Effluent Limits shall remain in effect until the effective date of the effluent limits prescribed in a renewed NPDES Permit No. AK-003865-2, and as to any effluent limits in a reissued permit whose effective date may be delayed or stayed as a result of administrative appeals or otherwise, during the period that the effluent limits are stayed. The Interim Effluent Limits have been agreed to during settlement negotiations and cannot be relied on or used by any party in any future proceeding.

C. Beginning with the date of entry of the Consent Decree and continuing through the earlier of (a) the date that marine discharge via the Pipeline commences or (b) Teck Cominco advises Plaintiffs and the Court pursuant to Paragraph 8 that it elects not to proceed with the Pipeline, Teck Cominco shall pay to the United States, automatically and without notice or demand, stipulated penalties in the amounts set forth below for the below listed violations of the Interim Effluent Limits applicable to Red Dog Mine and violations of the effluent limits in the reissued NPDES Permit No. AK-003865-2. For each violation of a given effluent discharge limit, Teck Cominco shall pay stipulated penalties as follows:

<u>Number of Daily Violations per Discharge Limit</u>	<u>Penalty</u>
1-10	\$625
11-25	\$1,500
26-50	\$3,750
51-300	\$6,000
301+	\$12,500



<u>Number of Monthly Violations per Discharge Limit</u>	<u>Penalty</u>
1-30	\$625
31-60	\$1,500
61-185	\$3,750
186-500	\$6,000
500+	\$12,500

For purposes of calculating the number of violations, violations shall not be cumulated for more than five years on a rolling basis. A monthly violation is a violation for every day in which discharge occurs during that month.

Within 30 days of entry of the Consent Decree and until the effective date of reissuance of NPDES Permit No. AK-003865-2, Teck Cominco shall pay a civil penalty of \$118,750 to the United States for each discharge season.

The stipulated penalties have been agreed to during settlement negotiations and cannot be relied on or used by any party in any future proceeding.

D. Teck Cominco shall pay all stipulated penalties to the United States by electronic funds transfer within 30 days of the submittal to EPA Region 10 of the discharge monitoring report that reports the occurrence of a violation under this Consent Decree. Compliance by Teck Cominco with the Interim Effluent Limits for Red Dog Mine and/or the reissued permit effluent limits for Red Dog Mine, together with timely payment of any stipulated penalties assessed pursuant to this paragraph 10, constitutes a complete remedy for any violations of the effluent limitations contained in NPDES Permit No. AK-003865-2 that occur between the date of entry of the Consent Decree and the effective date of reissuance of NPDES Permit No. AK-003865-2,

1 and for any violations of the effluent limits contained in a reissued permit No. AK-003865-2 that  
2 occur between the date of re-issuance and (1) the operation of the Pipeline or (2) Teck  
3 Cominco's notification to the Plaintiffs and the Court of the decision not to proceed with the  
4 Pipeline. Teck Cominco shall file annually with the Court and provide monthly to the Plaintiffs  
5 a report of violations and automatic penalties assessed pursuant to the Consent Decree.  
6

7 11. Teck Cominco agrees to pay Plaintiffs' costs and attorneys' fees, including expert  
8 witness fees and costs, in the amount of \$2,350,000 as provided by 33 U.S.C. § 1365(d).  
9 The check shall be made payable to the Center on Race, Poverty and the Environment  
10 (CRPE) and shall be received within 30 days of entry of this Consent Decree. CRPE  
11 shall be wholly responsible for the proper distribution of that sum to any and all  
12 attorneys, experts or other entities who may be entitled thereto. The sum set forth in this  
13 paragraph shall be complete settlement of Plaintiffs' claim for costs and fees incurred up  
14 to the date of entry of this Consent Decree and thereafter for responding to possible  
15 comments on this Consent Decree and for monitoring Teck Cominco's compliance with  
16 this Consent Decree, but does not include costs and fees, if any, incurred thereafter in the  
17 event of a proceeding that results in the Court issuing an order interpreting or enforcing  
18 the terms of this Consent Decree.  
19

20 12. The Court shall retain jurisdiction over this matter until termination of the  
21 Consent Decree per Paragraph 14. In the event of a dispute regarding implementation of,  
22 or compliance with, this Consent Decree, the parties shall first attempt to informally  
23 resolve the dispute through meetings between the parties by serving written notice of  
24 request for resolution to the parties and their counsel of record. If no resolution is  
25 reached within thirty (30) days from the date that the notice of dispute is served, the  
26 parties may resolve the dispute by filing motions with the Court.

27 13. The Court recognizes that no consent judgment can be entered in a Clean Water  
28 Act suit in which the United States is not a party prior to 45 days following the receipt of  
29

1 a copy of the proposed consent judgment by the U.S. Attorney General and the  
2 Administrator of the U.S. EPA pursuant to 33 U.S.C. § 1365(c)(3). The parties have  
3 certified that the EPA Administrator and the Attorney General received copies by no later  
4 than \_\_\_\_\_, and more than 45 days have elapsed since that date.

5 14. This Consent Decree shall take effect immediately. Upon notice to Plaintiffs,  
6 which may be accomplished by service of any pleadings filed with the Court, Teck  
7 Cominco may move the Court to terminate this Consent Decree at any time following the  
8 later of (1) completion of Teck Cominco's obligations under Paragraph 8 or (2) the  
9 effective date of reissued NPDES Permit No. AK-003865-2. In support of a motion to  
10 terminate, Teck Cominco shall certify that it has discharged all of its obligations arising  
11 under this Consent Decree. The Court shall terminate the Consent Decree unless, within  
12 45 days of service of Teck Cominco's certification, the Plaintiffs demonstrate that Teck  
13 Cominco has failed to discharge one or more of its obligations under this Consent  
14 Decree.

15  
16 15. This Consent Decree may be modified only upon the written consent of the  
17 parties and the approval of the Court.

18 16. Notifications required by this Consent Decree shall be served by first class mail,  
19 postage pre-paid, to each of the following addressees.

20 Plaintiffs:

21 Luke Cole  
22 Center on Race, Poverty & the Environment  
23 47 Kearny, Ste 804  
24 San Francisco, CA 94108

25 Nancy S. Wainwright  
26 Law Offices of Nancy S. Wainwright  
27 13030 Back Road, Suite 555  
28 Anchorage, AK 99515

29 Teck Cominco Alaska Incorporated:

Sean Halloran  
Hartig Rhodes Hoge & Lekisch, PC  
717 K Street

1 Anchorage, AK 99501

2 NANA Regional Corporation:

3 James Torgerson

4 Heller Ehrman LLP

5 510 L Street

6 Anchorage, AK 99501

7 Northwest Arctic Borough:

8 David S. Case, P.C.

9 Landye Bennett Blumstein LLP

10 701 W. 8th Avenue, Suite 1200

11 Anchorage, AK 99501

12 Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2008.

13 \_\_\_\_\_  
JOHN W. SEDWICK

14 UNITED STATES DISTRICT JUDGE

15 Center on Race, Poverty & the Environment

16 Attorneys for Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, David Swan and  
Joseph Swan

17  
18 By: \_\_\_\_\_  
Luke Cole

19  
20 Hartig Rhodes Hoge Lekisch, PC

21 Attorneys for Teck Cominco Alaska Incorporated

22  
23 By: \_\_\_\_\_  
Sean Halloran

24  
25 Heller Ehrman LLP

26 Attorneys for NANA Regional Corp.

27  
28 By: \_\_\_\_\_  
James Torgerson

1 Landye Bennett Blumstein LLP  
2 Attorneys for Northwest Arctic Borough

3 By: \_\_\_\_\_  
4 David S. Case, P.C.  
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EXHIBIT B

JOINT MOTION  
TO ENTER CONSENT DECREE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY ADAMS,  
ANDREW KOENIG, JERRY NORTON,  
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA  
INCORPORATED,

Defendant,

NANA REGIONAL CORPORATION, and  
NORTHWEST ARCTIC BOROUGH,

Intervenor-Defendants.

Case No.: A:04-cv-0049 (JWS)

**JOINT MOTION FOR ENTRY OF CONSENT DECREE  
EFFECTUATING SETTLEMENT**

Having reached a settlement of all issues in the above captioned matter, each and all of the parties request that the court enter a consent decree, in the form lodged herewith, following a comment period of not less than 45 days. The parties certify that a copy of the consent decree has been served on the U.S. Attorney General and the Administrator of the U.S. Environmental Protection Agency to enable them to each

comment pursuant to 33 U.S.C. § 1365(c)(3). The consent decree disposes of all issues in this matter.

Dated this \_\_\_\_ day of \_\_\_\_, 2008.

\_\_\_\_\_  
Luke Cole

Attorney for Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton, David Swan and Joseph Swan

Hartig Rhodes Hoge Lekisch, PC  
Attorneys for Teck Cominco Alaska Incorporated

By: \_\_\_\_\_  
Sean Halloran

Heller Ehrman LLP  
Attorneys for NANA Regional Corp.

By: \_\_\_\_\_  
James Torgerson

Landye Bennett Blumstein, LLP  
Attorneys for Northwest Arctic Borough

By: \_\_\_\_\_  
David Case

## EXHIBIT C

Exhibit C

Teck Cominco will apply for an NPDES permit for marine discharge from a Pipeline carrying Red Dog Mine effluent no later than thirty days after a reissued NPDES Permit AK-003865-2 is final and in effect and no longer subject to appeal.

It is the parties' understanding that a marine outfall discharge is being considered in the Supplemental Environmental Impact Statement for the Red Dog Mine currently under way.

Within 45 days after full execution of this Agreement, Teck Cominco will cause an application to be made to the United States Department of Interior and/or the National Park Service to begin the process of obtaining authorization for the DMTS right-of-way to include a Pipeline.

Within 180 days after full execution of this Agreement, Teck Cominco will initiate an investigation of the degree to which consultation with United States Fish and Wildlife Service must occur under the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and the Fish and Wildlife Conservation Act.

Within the first discharge season after full execution of this Agreement, Teck Cominco will undertake a wetlands survey for the DMTS as a prerequisite to apply for modification or issuance of any 404 permit from the United States Army Corps of Engineers applicable to the Pipeline.